

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

WILLIAM G. WEAVER
Department of Political Science
University of Texas at El Paso
El Paso, TX 79968

Plaintiff,

v.

DRUG ENFORCEMENT ADMINISTRATION
Mailstop: AES
2401 Jefferson Davis Highway
Alexandria, VA 22301

and

THE UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Defendants.

FILED
2006 NOV 13 AM 9:45
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY

JUDGE PHILIP MARTINEZ

Civil Action

EP06CA0398

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief, and seeking the expedited processing and release of agency records requested by plaintiff from defendant Drug Enforcement Agency.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This court also has

jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. §552(a)(4)(B).

PARTIES

3. Plaintiff William G. Weaver is an Associate Professor of Political Science at the University of Texas at El Paso. He regularly publishes in respected journals, and has authored or co-authored several books. His most recent effort, a co-authored book with Robert M. Pallitto, Presidential Secrecy and the Law, is forthcoming from Johns Hopkins University Press in spring 2007. He is currently under contract to the University Press of Kansas, writing a book on whistleblowers. The documents requested that are the subject of this suit are sought in support of research for this book.

4. Defendant Drug Enforcement Administration (DEA) is an agency of the Executive Branch of the United States Government. Defendant DEA is an "agency" within the meaning of 5 U.S.C. §552(f).

5. Defendant Department of Justice (DOJ) is a Department of the Executive Branch of the United States Government. Defendant DOJ is an "agency" within the meaning of 5 U.S.C. § 552(f). The DEA is an agency within the DOJ, and the DOJ is ultimately responsible for DEA compliance with United States law and regulations arising under those laws.

STATUTORY REQUIREMENTS

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within

twenty working days, notifying that party of at least its determination whether or not to fulfill the request, and of the requestor's right to appeal its determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

9. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the Court makes a written finding that "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation must ensue. 5 U.S.C. § 552(a)(4)(F).

FACTS GIVING RISE TO PLAINTIFF'S CLAIM FOR RELIEF

10. The Bureau of Immigration and Customs Enforcement (ICE), an agency of the Executive Branch of the United States Government, at various periods between 2001 and 2004 utilized an informant named Guillermo Eduardo Ramirez-Peyro (Ramirez), A/K/A "Lalo," and "Jesus Contreras," informant number SA913-EP. Ramirez passed information to ICE agents concerning activity of the Carrillo Fuentes drug cartel (Juarez Cartel) in Ciudad Juarez, Mexico. Ramirez's identity as a

confidential source has been made public in both print and television and his identity as the confidential source involved in the events described herein has been confirmed by the United States Government. (See e.g., "Cartel Figure Lashes Out," Dallas Morning News, October 15, 2006 <http://www.dallasnews.com/sharedcontent/dws/dn/latest_news/stories/101506dnintlinformant.32e234c.html>, "Inside Story on Mexican Drug Cartel," August 25, 2006, WFAA TV Dallas (televised interview with Ramirez); Memorandum in Support of Motion to Dismiss by U.S. Government in 3:05cv0478, Doc. 67-1, at 2).

11. On or about August 5, 2003, Ramirez, under direction of ICE agents, entered Juarez to make contact with members of the Juarez Cartel. During that contact, Ramirez recorded the murder of Fernando Reyes Aguado (Reyes), either through electronic device attached to Ramirez's body or interception through Ramirez's cell phone, which may have been left on during the murder (Exhibit 2, p. 4-5) Ramirez informed ICE concerning the murder, and ICE possesses both the original recording of the murder, as well as copies of that recording. The DEA possesses copies of the recording and transcripts of the recording as an attachment to a document ("Timeline of Events Surrounding Evacuation of Ciudad Juarez, Mexico Resident Office" (Timeline of Events), attached as Exhibit 2) that is the subject of a FOIA request giving rise to the present complaint.

12. Between August, 2003, and January, 2004, Ramirez was sent to Juarez by ICE for various missions and operations. During that

time, Ramirez witnessed and participated in numerous murders ordered by Heriberto Santillan Tabares (Santillan), then a high ranking member of the Juarez Cartel. Victims, drug dealers and transporters of drugs, were brought to the house at Calle Parsioneros 3633 in Ciudad Juarez (Parsioneros House), tortured for information as to the location of drugs or money, and then murdered. After each murder, Ramirez reported the murder to agents of ICE. Ramirez also testified that ICE agents were aware in advance that murders would take place. For example, the following exchange occurred during testimony at an immigration hearing concerning Ramirez, who is presently in U.S. custody:

"Lashus [Government Counsel]: Did you tell your – the ICE officers that you were aware that Mr. Santillan had ordered the deaths of people associated with the cartel?

Ramirez Peyro: Yes.

Lashus: Did you tell them before, right before it happened?

Ramirez Peyro: Yeah, several occasions. For example, in one occasion in Chicago, and Santillan talks to me, so I could send the boy there to open the [Parsioneros] house and me being in Chicago with the agents from ICE, and they knew because I authorize for them to hear my phone conversations. And besides that, I told them what's going on, and in El Paso they were listening my phone calls." (Transcript of Hearing

in the Matter of Guillermo Eduardo Ramirez-Peyro, August 11, 2005, File A-78-745-209, at pp. 87-88).

13. In affidavits in a suit against the United States and various federal employees proceeding under the Federal Tort Claims Act and Bivens claims (3:05cv0478 W.D. of Texas), accused agents of ICE acknowledge that they were aware of the murders committed in the presence of, and with the assistance of, Ramirez. For example, Raul Bencomo (Senior Special Agent, ICE), while denying that he had prior knowledge of murders that Ramirez would be involved in acknowledged that "We only learned about the murders through interviews of Guillermo Eduardo Ramirez Peyro . . . after the fact." Similar statements appear in the affidavits of Curtis R. Compton (Supervisory Special Agent, ICE), and Giovanni Gaudioso (Acting Deputy Assistant Director, Mission Support Division, Office of Investigations, ICE).

14. The U.S. government contends that "ICE agents [and] officials within the United States Attorney's Office for the Western District of Texas allegedly failed to share with DEA information gained in the Santillan investigation due to mistrust." (3:05cv0478, Memorandum in Support of Motion to Dismiss by U.S. Government, Doc. 67-1, at 3). Former Special Agent in Charge of the DEA's El Paso Field Office, Sandalio Gonzalez, wrote to his ICE counterpart that "Following the murder of Reyes in August 2003, your agents requested several country clearances for [Ramirez] to travel to [Juarez] and

they continued sending [Ramirez] to [Juarez] while failing to report his activities to DEA as required by our own internal agreements" (Memo to Giovanni "John" Gaudioso, February 24, 2004 (Gonzalez Memo)).

15. At 8:00am on January 14, 2004, Santillan notified Ramirez to open the Parsioneros House and to get ready for "carne asadas," or a "barbeque," the code phrase that a victim or victims are to be procured, tortured and murdered. At 6:05pm "hired killers" (Gonzalez Memo, at p. 1) working for Santillan, who were also members of the state judicial police, went to the Ciudad Juarez residence of Special Agent Homer McBrayer, a DEA agent with the DEA Ciudad Juarez Resident Office (CJRO). Santillan's men knocked on the McBrayers' door for at least ten minutes. Special Agent McBrayer was at work and his wife and two children were at home. Mrs. McBrayer did not open the door when Santillan's men knocked, and she immediately called her husband, who returned home, gathered up his family and started to drive toward El Paso. While driving toward El Paso, McBrayer and his family were stopped by a municipal police unit and an unmarked truck. The officers involved in this stop were apparently under orders to kidnap McBrayer, and perhaps his family, and take him to the Parsioneros House for torture and murder. With intervention of CJRO DEA agents called in by Agent McBrayer, the kidnap was averted.

16. Unsure about the scope of danger to agents in CJRO, all DEA agents in Juarez were evacuated to El Paso on the evening of January 14, 2004.

17. On February 24, 2004, DEA SAC EL Paso Gonzalez wrote ICE SAC El Paso Gaudioso, holding ICE responsible for the events of January 14 and for threats to DEA agents caused by ICE failure to keep the DEA apprised of its activities in Ciudad Juarez. Subsequently, CJRO DEA agents created a detailed report of events in question (Timeline of Events, Exhibit 2). This report contained attachments A through P, including various documents as well as a recording and transcript of the recording of the murder of Reyes.

18. As a result of the events between August 2003 and January 2004, a Joint Assessment Team was assembled by DEA and ICE headquarters to conduct a management review of what transpired. This team conducted over 40 interviews of involved personnel, including a number of interviews with personnel in the U.S. Attorney's office for the Western District of Texas, and created a report of its investigation. This was not a criminal investigation, but an administrative assessment of the working relationship failures that occurred between ICE and DEA. In an employment discrimination case filed by Gonzalez against the DEA for retaliation taken against him, the U.S. Government's witness list includes Karen Tandy, Administrator of the DEA, and others who are to testify, at least in

part, about "JAT [Joint Assessment Team]/Ciudad Juarez matters" (02-20982-CIV, Doc. 178, Exhibit A, S.D. Florida). This leaves little doubt that the Joint Assessment Team produced a report on the incidents that took place in Juarez.

PLAINTIFF'S FOIA REQUEST

19. By letter to defendant DEA dated October 30, 2005, plaintiff requested under the FOIA "1) The Joint Assessment Team management review report from the investigation of the Drug Enforcement Agency and Immigration and Customs Enforcement offices in the El Paso, Texas, division conducted, apparently, between January and March 2004. The assessment team also visited offices in Ciudad Juarez and Mexico City, Mexico, as well as offices in the El Paso, Texas, division. 2) Transcripts of the forty-four interviews undertaken for the above-mentioned joint assessment team review. 3) Audio tapes for the forty-four interviews undertaken for the above-mentioned joint assessment management review. 4) All notes or other documents utilized in preparation of the above-mentioned management review, whether or not the substance of those documents contributed to the final report of the Joint Assessment team."

20. By letter to defendant DEA dated November 6, 2005, plaintiff requested under the FOIA "All of the attachments to a report entitled 'Timeline of Events Surrounding Evacuation of Ciudad Juarez, Mexico Resident Office'. This report was apparently generated by the Ciudad Juarez Resident Office, and completed sometime after February 12, 2004." The request then described each attachment requested.

21. In a faxed letter to Defendant DEA on September 16, 2006,

Plaintiff wrote: "This communication is to request that you process whatever information has so far been collected under the request number above. Let me be clear that this is NOT a request that you terminate the search with what has already been collected. I am simply asking that you process material so far collected, and that you continue with the search.

Let me say, however, that the delay on this request is troublesome. Several DEA agents have informed me that all of the material requested is together, at headquarters office, and requires no searching of field offices or even any disparate offices at headquarters. The attachments to the Timeline of Events report that I asked for in my November 6, 2005, request are collected together with the report itself at headquarters and so no significant search is required. Additionally, in the same file is the Joint Assessment Team report I sought in a subsequent request, which has been combined under the 06-0327-F request that originated with the November 6, 2005 letter [Note: This is in error; actually the request for the Joint Assessment Team report was sent to Defendant DEA on October 30, 2005, and so predated the request for the attachments to the Timeline of Events].

Since several people with firsthand knowledge have independently explained that all of the material requested is all together and at headquarters, I have a hard time coming to any conclusion other than that my request is being purposefully stalled. So, by next Friday, September 22, I would like a complete explanation of what material has been collected so far under this request and a time line for decision making with respect to disclosure of that

material. Further, since all of the material I have requested is collected together at headquarters, I would like an explanation for any requested material that is claimed to be missing from the search as so far conducted.

The DEA is in violation of FOIA statutory time requirements with respect to this request. I have been flexible concerning these time requirements, but since I now believe it is possible the DEA is acting in bad faith concerning my requests, I am less inclined to continue that flexibility." Defendant DEA did not respond to this communication. Exhibit 1 contains a timeline of communication events between Defendant DEA and Plaintiff.

DEFENDANT'S DILATORY ACTION AND FAILURE TO RELEASE REQUESTED DOCUMENTS

22. By a letter to Plaintiff dated December 8, 2005, Defendant DEA acknowledged receipt of the October 30, 2005, request letter for the Joint Assessment Team report and associated documents. No case number was indicated as assigned to Plaintiff's request in this communication (Exhibit 3 contains communications to and from DEA and Plaintiff in chronological order).

23. By a letter to Plaintiff dated December 27, 2005, Defendant DEA acknowledged receipt of Plaintiff's "initial Freedom of Information (FOIA) request, dated November 6, 2005," but denied the request as being overbroad and implicating the Privacy Act to the extent information about third parties was requested. The case number assigned to this request was 06-0327-F. On January 30, 2006, Plaintiff

responded to the denial of December 27, 2005. Plaintiff did not appeal the denial, but accepted an offer in the denial letter to clarify and reformulate the request. Plaintiff supplied Defendants with an unredacted copy of the Timeline of Events by the CJRO to aid Defendants in locating the attachments to that document. Plaintiff also disputed the claims that the request was overbroad and that the Privacy Act was implicated in the request.

24. Defendant DEA responded on May 12, 2006, that it would proceed to process the November 6, 2005 (Case Number 06-0327-F) request. This response did not raise Privacy Act issues or make any other assertion that the request was defective.

25. Plaintiff and Defendant DEA, acting through FOIA contact officer Phyllis Drewry for the DEA, on August 11, 2006, telephonically agreed to combine the FOIA requests of October 30, 2005, and November 6, 2005, under request number 06-327-F.

26. Between July 18, 2006, and October 15, 2006, Plaintiff made over a dozen attempts to contact Defendant DEA and determine the status of the requests and to inquire why Defendant DEA was not meeting its statutory requirements under FOIA. While Defendant DEA did respond telephonically on four occasions, no substantial information concerning the status of the Plaintiff's FOIA requests was forthcoming. Repeated requests by Plaintiff that Defendant DEA identify some estimated time, per 5 U.S.C. § 552(a)(6)(B), for production of documents or a denial decision went unanswered.

27. To date, the DEA has not provided the records requested by Plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

28. Defendants have wrongfully withheld the requested records from Plaintiff.

CAUSE OF ACTION

**VIOLATION OF THE FREEDOM OF INFORMATION ACT FOR
FAILURE TO TIMELY RESPOND TO PRODUCE REQUESTED RECORDS**

29. Plaintiff realleges and incorporates all preceding paragraphs.

30. Plaintiff properly asked for records within the control of Defendant DEA.

31. Plaintiff is entitled by law to access to the records requested under FOIA, unless Defendants make an explicit and justified statutory exemption claim.

32. Therefore, Defendants violated FOIA (5 U.S.C. §§ 552(a)(3)(A), 552(a)(4)(B)) by failing to release the records requested by Plaintiff.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. order Defendants immediately to process the requested records in their entirety;
- B. order Defendants, upon completion of such expedited processing, to disclose the requested records in their entirety and make copies available to Plaintiff;
- C. provide for expeditious proceedings in this action;
- D. award Plaintiff his costs and reasonable attorneys fees incurred in this action; and
- E. grant such other relief as the Court may deem just and proper.
- F. make a written finding that the circumstances surrounding the withholdings in this case raise questions whether agency personnel acted arbitrarily or capriciously.

Respectfully submitted,



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